IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8624 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.PANDIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

DO ALL INDUSTRIES

Versus

MAGANBHAI DAHYABHAI

Appearance:

MR RD DAVE for Petitioner

MR PH PATHAK for Respondent No. 1

CORAM : MR.JUSTICE S.D.PANDIT

Date of decision: 14/07/98

ORAL JUDGEMENT

#. Rule. Mr.Pathak, learned advocate for the respondents waives the service of rule. Do all Industries and Industrial undertaking has filed the present petition to challenge the award passed by the labour court of Ahmedabad in recovery application No.1428 of 1990 on 5-9-1997.

#. The respondent Maganbhai Dahyabhai was a workman

with the present petitioner since 5-2-1973. As he was wrongly retrenched he raised an industrial dispute which has resulted into reference No.598/1975. The said reference No.598/75 ended into an award in his favour passed on 3rd September,1980. Thereafter the respondent filed recovery application No.1486/81 to recover the amount in term of the said award. In para-5 of the said recovery application, initially the arrears of pay and wages upto 31st Ayugust,1981 were claimed. Subsequently, amendment was sought in the said application and the arrears of pay till September,1987 was claimed. During the said recovery application No.1486/81 the present petitioner-the employer raised contention that after the award was passed, they had called upon the respondent workman to join the job by sending him a letter by R.P.A.D. but he didn't join the job. It was further contended that the respondent workman had himself purchased a rickshaw and he was running his rickshaw and therefore he was not interested in the job. In the said recovery application, evidence was led by the both the sides and after considering the evidence which included the documents showing purchase of Rickshaw by the respondent and the statement on oath of the present respondent, the labour court found that the claim of the present petitioner that the respondent had not resumed his job though intimated by the petitioner and the respondent was not interested in job as he had purchased rickshaw and he was running the rickshaw, was true and correct. The labour court considered particularly the statement on oath of the workman and other documentary evidence on record and then the labour court held that as the workman himself has not joined the job as per the terms of the award and he had abundened the job as he was not interested in joining the job, he was not entitled to get any pay and wages, after the date of award. The labour court found that as the award had directed to pay backwages from the date of dismissal, the workman was entitled to get the backwages till the date of award and Court specifically rejected his claim for awarding backwages from the date of award till September,1987 as claimed in the application by holding that he was not entitled as he had not joined his duty and had abandoned. Admittedly the respondent had not challenged the order passed by the labour court in the said recovery application 1486/81 by taking up the matter to superior authority.

#. No doubt, the present petitioner had challenged the original award passed in Reference No.558/75 as well as the order of labour court passed in recovery application No.1486/81 by preferring SCA No.6455/89. The

said SCA No.6455/89 preferred by the present petitioner was rejected by confirming the order passed by the labour court in the recovery application no.1486/81 as well as the award passed in reference No.558/75.It is very pertinent to note that in the said petition respondent had appeared. The present petitioner had disputed and challenged the order of payment of backwages till the date of award. That claim was rejected by this court. But the respondent had not either challenged the denial of wages from the date of award by preferring a separate petition or even by raising a contention to that effect in the petition filed by the present petitioner.

#. It seems that after the decision of the said SCA No.6455/89, the respondent has lodged a criminal case bearing No.1927/90 before the Chief Metropolitan Magistrate of Ahmedabad. The said criminal case was dismissed and it is submitted before me by the learned advocate for the respondent that the revision against the said dismissal order is pending before this High Court. In the mean time, the respondent has filed second recovery application No.1428/96. In the said recovery application, the respondent had claimed all the arrears of wages from the date of award till the date of application. In this second application, he had also claimed amount towards bonus, amount towards provident fund. In the second application, the present petitioner has put in his appearance and has contested the claim of the respondent. The first contention raised on behalf of the present petitioner was that in view of the earlier decision in recovery application No.1486/81, the respondent is not entitled to get any amount by way of wages, in view of the fact that he himself has abondoned the job by refusing to join the job and he was also earning as he himself was running rickshaw owned by him. It is further contended that the claim of the bonus and claim of the provident fund is not tenanble and there is no justification of his entitlement to these two claims. It is further contended that in view of the earlier decision in recovery application No.1486/81, the Second Application No.1428/90 is barred by principle of resjuidicata. It was also contended that the second application is filed in the year 1990 and therefore it was hit by delay and laches as the said is filed to recover the amount after 10 years. As per the provision of Section 31(1)(C), the recovery application ought to have been filed within 1 month from the date the amount is due. Thus, it was contended that the second revision application No.1428/90 should be rejected. The learned labour court has allowed the claim of the respondent. He has not discussed in detail the questions raised before

him that the second application was hit by the principle of res judicata. He has not also considered the question of limitation raised on behalf of the present petitioner and was pleased to allow the claim of the respondent.

#. Being aggrieved by the said decision, the employer has come before this court. It is contended on behalf of the employer petitioner that the second application ought to have been rejected on the ground of res judicata. It is contended that the general principle of construction res judicata are also applicable to the labour matters and therefore when once the claim of the present respondent was rejected by the competent court and when that rejection has become final on account of non quashing by same by any authority, the labour court ought not to have entertained the second application. In order to consider this contention, it is necessary to consider the claim made by the respondent in the earlier application as well as in the second application. The copy of the recovery application No.1486/81 is produced as Annexure B to this petition and it is at Pages 24 to 33. At Page 26 in Para-5, the present respondent had claimed arrears of pay from 1-1-1981 to 31st August,1981. Then the said application was amended and at pages 29 33, their amended statement of claim is filed and this amendment statement of claim shows that the claim for arrears of pay was made upto September,1987. The order passed in the said recovery application No.1486/81 is produced at Pages 34 to 42 and in the said judgment in Para-8, the labour court has specifically recorded the findings of the fact that the claim of the workmen that after the passing of the award, he had gone to join the job and that the employer didn't allow him to join the job, was not proved by the workmen and on the contrary the employer had sent letters to him to join his job but as the workman was not interested in the job, on account of his running of his own rickshaw, the claim for the arrears of wages from the date of award could not be granted. The order of the labour court shows that the labour court has granted him backwages only till the date of award. Therefore in view of the said order in recovery application No.1486/81, it would be quite clear that in a proceeding of recovery between the same parties, it has been held by the competent court that the workman had not joined his job after passing of the award inspite of he being directed to join the job and he had abondened it as he was running his rickshaw and that workman was not entitled to claim and get any wages since the date of award. Now that finding of the labour court in the earlier recovery application No.1486/81 has become final as the same was not challenged by the respondent by

taking any further proceeding in superior courts. Now once it has been held by the competent court that the respondent workman had not joined his job and had abondoned it, he was not entitled to get the claim of backwages after date of award, then it ought not to have been decided by the labour court in the subsequent proceedings that he was not taken on the job and that he was entitled to get the wages from the date of the award. Now no doubt the provision of Code of Civil Procedure are not strictly applicable to the labour proceeding but the principles of constructive res judicata is always made applicable to the proceeding under the labour law. The principle of res judicata is based on the principle of natural justice because if once the party has faced litigation and in the said litigation the claim of the party has been decided on merits, then it will not be open for the same party to raise same contention and same claim again in subsequent proceeding. This view is also taken by the single Judge of the Madras High Court in the case of S.Pandubhai Vs. Bombay Cycle Import Company Ltd. 1970 (2) LLJ 559. Thus, in my opinion, the second recovery application filed by the respondent bearing No.1428/90 ought not to have been entertained and decided by the labour court.

#. It must be remembered that earlier the respondent had an opportunity to lead evidence in support of his claim. He had in fact led evidence in support of his claim and on the consideration of the evidence led before him, earlier court has come to the conclusion that his claim that he was ready and willing to join service and he was not taken on job, was not proved and the contrary he didn't joined his job though asked by his employer to join and further held that he was not entitled to get any wages from the date of award. When those were the findings recorded by the court which had jurisdiction to entertain and decide the issues involved the Second Application ought not to have been entertained and too by giving contrary finding by the court having the same jurisdiction. Such decisions could not be accepted and allowed by the Rule of law because there will be no rule of law if such procedure is allowed to go. Therefore, I hold that the second application ought not to have been entertained.

#. Mr.Pathak, learned advocate for the respondent urged before me that it was not at all necessary for the labour court to go into question as to whether the respondent had gone to accept the job in pursuance of the award passed in his favour. He submitted before me that in a proceeding under Section 33 C, the court is not

called upon to decide that issue. But when the applicant claims wages on the basis that he is entitled to get wages and he could not work because the employer didn't allow him to work and when the employer contends that he is not bound to pay wages because though he had offered opportunity to join the job, the worker himself abandoned the job by not accepting the job then those disputes will have to be decided by the labour court in order to find out as to whether the applicant is entitled to get and claim the wages.

#. Then it is further contended before me that the petitioner - original respondent's claim is hit by laches. If the provision of jurisdiction proviso, section 33 then it is quite clear that claim of arrears of wages must be made within 1 month. Now apart from the fact that this is specific provision which is by way of amendment of the section, even assuming that there is no limitation for such application, it is always expected that the party would come within reasonable time. Now the petitioner has filed recovery application on 12-6-90 for claiming for arrears from 1980. Therefore it is obviously a belated claim and the that petititioner's claim is hit by laches. This view is taken by the Apex Court in the case of Maheshchandra Shankarchandra and another 1992 Supplementary, S.C. 752.

#. Therefore in view of the discussion, I hold that the present petition must be allowed. The order passed by the learned labour court in allowing the respondents' recovery application No.1428/90 must be quashed and set aside. I accordingly allow this petition and quash and set aside the award and order passed by the learned labour court in recovery application No.1428/90 but in the circumstances of the case, I direct the parties to bear respective cost. Rule is made absolute.

Date : 14-07-1998 (S.D.Pandit,J.)

(KPP)